OLR Bill Analysis

SB 243

AN ACT CONCERNING CERTIFICATES OF MERIT.

SUMMARY:

This bill expands the types of health care providers who may provide a prelitigation opinion letter concerning evidence of medical negligence in a medical malpractice lawsuit or apportionment complaint (see BACKGROUND). The bill also requires that instead of including a detailed basis for the formation of the opinion, the opinion letter include a detailed statement identifying one or more breaches of the prevailing professional standard of care.

The bill allows dismissal of an action due to failure to obtain and file the opinion letter only if the claimant does not (1) attach a copy of the opinion letter to the good faith certificate, as is required by law, or (2) remedy the failure to attach the letter within 60 days of a court order to do so.

EFFECTIVE DATE: Upon passage, and applicable to causes of actions pending on or accruing on or after that date.

HEALTH CARE PROVIDERS QUALIFIED TO SUBMIT OPINION LETTER

By law, an attorney or claimant cannot file a medical malpractice lawsuit or apportionment complaint unless he or she has made a reasonable inquiry under the circumstances to determine that grounds exist for a good faith belief that the claimant received negligent medical care or treatment. The complaint or initial pleading must contain a certificate to this effect, that such grounds exist against each named defendant.

Under current law, to show such good faith, the claimant or attorney must obtain a written, signed opinion from a "similar health

care provider" (see BACKGROUND) that there appears to be evidence of medical negligence. The bill also allows an opinion letter from health care providers who are not "similar health care providers" but are otherwise legally qualified to be expert witnesses. By law, this includes a provider who, to the court's satisfaction, has sufficient training, experience, and knowledge from actively practicing or teaching in a related field within the five years before the incident giving rise to the claim, to be able to provide expert testimony on the prevailing professional standard of care in a given medical field.

The bill classifies all providers who may submit an opinion letter as "qualified health care providers."

BACKGROUND

Apportionment Complaints

The requirement for a good faith certificate and opinion letter also applies to apportionment complaints against another health care provider. An apportionment complaint is a defendant's claim in a medical malpractice lawsuit that another health care provider, who the plaintiff did not make a defendant, committed malpractice and partially or totally caused the plaintiff's damages.

Similar Health Care Providers

By law, similar health care providers may testify as expert witnesses, and may also submit an opinion letter as specified above. Similar health care providers are either of the following:

1. if the defendant is a specialist or holds himself or herself out as a specialist, a provider (a) trained and experienced in the same specialty as the defendant and (b) certified by the appropriate American board in that specialty, provided that if the defendant is providing treatment or diagnosis for a condition not within his or her specialty, a specialist trained in that condition is also considered a similar health care provider; or

2. if the defendant is not board certified, trained, or experienced as a specialist, or does not hold himself or herself out as a specialist,

a provider (a) licensed by Connecticut or another state requiring the same or greater qualifications and (b) trained and experienced in the same discipline or school of practice as the defendant through active involvement in practice or teaching within the five years before the incident giving rise to the claim.

Related Cases

Several recent state Supreme Court decisions have interpreted the statute that this bill amends (CGS § 52-190a). For example, in *Wilcox v. Schwartz*, 303 Conn. 630 (2012), the court held that a written opinion letter satisfies the statute's "detailed basis" requirement "if it sets forth the basis of the similar health care provider's opinion that there appears to be evidence of medical negligence by express reference to what the defendant did or failed to do to breach the applicable standard of care."

Also, in *Bennett v. New Milford Hospital, Inc.*, 300 Conn. 1 (2011), the court granted the defendant's motion to dismiss because the author of the opinion letter was not a "similar health care provider" within the meaning of the statute. The defendant specialized in emergency medicine, but the opinion letter's author described himself as "a practicing and board certified general surgeon with added qualifications in surgical critical care, and engaged in the practice of trauma surgery."

COMMITTEE ACTION

Judiciary Committee

Joint Favorable
Yea 29 Nay 14 (03/21/2012)